

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MELVA LUNA,

Plaintiffs,

vs.

Civ. No. 07-1031 JP/KBM

JON MARTINEZ, CHRIS LYLE, BRANDY MOON,
and KEITH RICE, in their individual capacities, the
LEA COUNTY BOARD OF COUNTY COMMISSIONERS,
and CITY OF EUNICE,

Defendants.

MEMORANDUM OPINION AND ORDER

On July 14, 2008, Plaintiff Melva Luna filed Plaintiff Melva Luna's Motion to File First Amended Complaint and Memorandum in Support (Doc. No. 130). Having reviewed the briefs and relevant law, the Court determines that Plaintiff Melva Luna's Motion to File First Amended Complaint and Memorandum in Support should be granted in part.

Plaintiff Melva Luna seeks to amend her Complaint to correct the name of Defendant Brandy Moon; add Vivian Martinez, Brian Stover, and Ron Walker as new Defendants; delete Defendants who have settled with Plaintiffs¹; conform the facts in the Complaint with evidence obtained from discovery; and to refine Plaintiff Melva Luna's current legal claims as stated in the Complaint. The Lea County Defendants, the remaining Defendants, do not oppose correcting Defendant Brandy Moon's name and adding Vivian Martinez as a Defendant. The Lea County Defendants, however, oppose the remainder of Plaintiff Melva Luna's motion to amend.

¹It is the policy of this Court to omit from the caption any defendants who have been dismissed from a case.

On May 21, 2008, the Honorable Magistrate Judge Karen B. Molzen entered an order extending the time for Plaintiff Melva Luna to file any motions to amend the Complaint “until 10 days after the settlement conference scheduled on June 23, 2008.” Doc. No. 103. Plaintiff Melva Luna filed her motion to amend on July 14, 2008, more than 10 days after the June 23, 2008 settlement conference. Plaintiff Melva Luna attempts to justify not meeting Judge Molzen’s deadline by stating that “[o]nly after the Lea County Defendants failed to settle with Plaintiff did it become clear that she would need to file a motion to amend the complaint to delete the settling defendants and to add Stover and Walker.” Plaintiff Melva Luna’s Reply to Lea County Defendants’ Partial Opposition to Plaintiff’s Motion to File First Amended Complaint at 6 (Doc. No. 144), filed Aug. 18, 2008. This justification fails to provide a sufficient excuse for not meeting Judge Molzen’s deadline and does not explain why Plaintiff Melva Luna, at the very least, did not file another motion to extend the time for filing a motion to amend. If a party does not obey a scheduling order, the Court may on its own issue “any just orders....” Fed. R. Civ. P. 16(f)(1)(C). Moreover, undue delay is an acceptable reason for denying a motion to amend under Fed. R. Civ. P. 15(a)(2). *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (“In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment,” leave to amend should be freely granted.). Considering the situation of this particular case, the Court concludes that Plaintiff Melva Luna should be permitted to amend the Complaint only to correct Defendant Brandy Moon’s name and to add Vivian Martinez as a defendant.

IT IS ORDERED that Plaintiff Melva Luna's Motion to File First Amended Complaint and Memorandum in Support (Doc. No. 130) should be granted in part; and that Plaintiff Melva Luna is permitted to file a first amended complaint by October 6, 2008 in which Defendant Brandy Moon's name is corrected and Vivian Martinez is added as a Defendant.



SENIOR UNITED STATES DISTRICT JUDGE